reasonably have been anticipated, though it is not necessary that the injury in its precise form be foreseen, (*Hill* v. *Winsor,* 118 Mass. 251, 259,) notwithstanding the intervention of an independent agency, the causal connection is not broken and the original wrongdoer is liable for the injuries resulting from his wrong. *Southern R. Co.* v. *Webb,* 116 Ga. 152, 42 S. E. 395, 59 L. R. A. 109; *O'Connor* v. *Andrews,* 81 Tex. 28, 16 S. W. 628.

The theory upon which the decision in the principal case (*Seith* v. *Commonwealth Elec. Co.,* supra) is based may be stated thus: if the intervening act be one such as might not reasonably be anticipated, then the causal connection between the act and the injury is broken and the original wrongdoer is released from liability for his wrongful act. This principle is stated conversely in the cases of *Lane* v. *Atlantic Works,* 111 Mass. 136; *Williams* v. *Koehler,* 41 N. Y. App. Div. 426, 58 N. Y. Supp. 863 and others. The argument of the majority opinion, rendered by CARTWRIGHT, C. J., consists of an attempt to show that the act of the policeman in trying to remove the wire from its position and probably relieve a dangerous situation, was one not to be anticipated and therefore applying the rule as above stated, no liability attaches to the owner of the wire. However, adopting the logic of the dissenting opinion of VICKERS, J., this position is untenable for as stated above, the precise form of the act is not what is to be foreseen, but rather the probability of any act occurring which would in some manner cause injury to a third party. H. L. P.

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APPLICATION OF MICHIGAN STATUTE FOR THE BENEFIT OF LABORERS AND MATERIALMEN ON PUBLIC WORKS AND THE RIGHT OF THIRD PARTIES TO SUE.—As mechanics' liens do not attach to public works in Michigan (*Knapp* v. *Swaney,* 56 Mich. 345) by statute a bond is required of the contractor to pay for all labor and materials furnished in public works. The recent decision of the supreme court of Michigan in the case of the *City of Alpena for the Use and Benefit of Isaac Zess* v. *Title Guaranty & Surety Company,* decided December 10, 1909, 16 Det. L. N. 783, 123 N. W. 536, shows the apparent desire of the Michigan courts to give unpaid laborers and materialmen of public works, the protection of this statute. The cases cited in the opinion, however, hardly sustain the propositions made by the court to the full extent for which they are given, and the correctness of the conclusion of the court in this case, it would seem, might be questioned.

The facts in the case were, briefly, that the Murray Company made a contract with the city of Alpena to construct a water-works system. A bond was given by the contractor to the city, with the Title Guaranty Surety Company as surety. Labor and materials on this work were furnished which have never been paid for. The unpaid laborers and materialmen, claiming that the bond given comes within the statute requiring a bond for their protection, bring suit against the surety.

By a comparison of the language of the bond given with the language of the statute, it is plainly evident that the purpose of this bond was not to protect the laborers and materialmen. The statute in the consecutive sections

10,743, 10,744, and 10,745 of the Michigan Compiled Laws of 1897 provides in plain and unequivocal terms that the purpose of such bond is that the contractor "shall pay all parties performing labor or furnishing material" on such work. This bond provides for the faithful performance of the contract and that the obligors "shall indemnify and save harmless the city of Alpena, the city council and officers and the people of the state of Michigan against all claims which may accrue." As the wording of the rest of the bond closely resembles the wording of the statute the above departure shows a manifest intention not to follow the statute, but to give a bond for another purpose than there provided for.

The exact theory upon which the bond was drawn is not apparent. But as members of the board or municipal body who fail to require the statutory bond in question, may be liable in their individual capacity, to injured parties in whose interest it should have been given (*Wells* v. *Board of Education,* 78 Mich. 260, *Plummer* v. *Kennedy,* 72 Mich. 295) the conclusion of the court that, "the purpose of this bond to protect the officers against such action is clear" seems natural. But the inference of the court that the bond given is within the statute from its further statement that, "This purpose is not defeated by the fact that the bond is not in the precise form required by §10,744," is not warranted by the case cited, *Board of Education* v. *Grant,* 107 Mich. 161, 64 N. W. 1050, nor, it seems, by general authority.

In *Board of Education* v. *Grant,* supra., the bond provided in express terms that the contractor should pay for all labor and materials furnished. There was a further condition, "to pay all judgments and decrees rendered for such labor and materials, and to save the board harmless from all liability incurred in connection with the defense of such claims." But this latter condition was rejected as surplusage, so that it left the bond to exactly comply with the statute. This rejected condition closely resembles the condition given in the principal bond in question and this case cited would seem to be authority for the opinion that a bond for the purpose of protecting such officers does not come within the statute. This bond is not in the form required by the statute and should be construed as a common law obligation. The terms of the statute requiring an official bond cannot be read into a form of bond differing from the form prescribed by the statute; such a bond must be construed, according to its terms, as a common law obligation. In construing a voluntary common law bond, the intention of the statute becomes wholly immaterial and the liability of the surety will not be extended by implication beyond the precise terms of his undertaking, which is to be strictly construed. 1 BRANDT SURETYSHIP, p. 80, *Mayor of Brunswick* v. *Harvey,* 114 Ga. 733, *Abrahams* v. *Jones,* 20 Bradwell (Ill. App.) 83.

The bond in question would seem to have been intended for an indemnity bond merely, if the words used, "indemnify," and "save harmless," were given their customary meaning. 7 WORDS AND PHRASES, p .6337; *Foster* v. *Atwater,* 42 Conn. 244; *Nugent* v. *Boston C. & M. R. R.,* 80 Me. 62. But the court has construed the purpose to have been to protect the city from having to defend any suit at the hands of unpaid materialmen or laborers, rather than to

indemnify the city if it should become liable at the hands of the injured parties. In *Commonwealth* v. *O'Connell Construction Co.* (1909), 39 Pa. Sup. Ct. 105, the bond was conditioned for the due performance of the contract and to indemnify the state against liability for material furnished to the contractor. In construing that bond the court said, "Breach of the bond arising from that source (breach of its conditions) can occur only in case the commonwealth becomes liable for the materials furnished."

By the contract in the principal case, the Murray Company was to furnish the labor and material at its own proper cost and expense. As the bond was conditioned for the faithful performance of the contract and to indemnify and save harmless the city of Alpena, etc., or, according to the interpretation of the court, to save the city from any action, the court imply into the terms of the contract the condition, that the Murray Company was to pay for all labor and materials furnished. *Stoddard* v. *Hibbler,* 16 Det. L. N. 114, 120 N. W. 787, was cited as authority. In that case such a condition was implied in the contract, but there the obligee had paid for the labor and material as mechanics' liens had attached, and the bond was really an indemnity bond. If such condition be implied in the contract, it must be solely for the benefit of the intended obligees in this bond, the city. To imply this condition in the bond of this case, so as to turn this bond into the bond that was required by the Michigan statute would change the contract as intended and entered into by the surety. In *Smith* v. *Bowman,* 32 Utah 33, the contractor was to furnish all labor and materials on buildings for the State Agricultural College, and to deliver them free from all liens. A bond was furnished to secure the faithful performance of the contract, and was made expressly to the Agricultural College and all persons entitled to liens under the contract. By statute liens do not attach to public buildings. Unpaid materialmen, as in this case, sought to recover on the bond. The court said, "The parties having thus expressed themselves unambiguously, we can see no reason why this court should strain after reasons for thwarting their obvious purpose in an endeavor to read someone into the bond not intended to be benefited by it. Though a promise had been made to pay for materials, yet if, from the whole bond, such promise was only made for the purpose of saving the Agricultural College harmless and to indemnify it against loss or damage, and not for the the benefit of parties who might furnish material, and that such was the ruling intention of the parties, then the sureties cannot be made liable to parties who furnished material, for the reason that the ruling intention of the parties must govern."

The court in this case does not say in express words that this bond comes within the statute. If the general inference that such bond is within the statute is not correct, to allow these laborers and materialmen, parties in interest only, to recover on this common law obligation, would be contrary to the long line of decisions as laid down by this court. *Pipp* v. *Reynolds,* 20 Mich. 88; *Turner* v. *McCarty,* 22 Mich. 265; *Halsted* v. *Francis,* 31 Mich. 113; *Hicks* v. *McGarry,* 38 Mich. 667; *Booth* v. *Connecticut Mutual Life Ins. Co.,* 43 Mich. 299; *Hidden* v. *Chappel,* 48 Mich. 527; *Wheeler* v. *Stewart,* 94 Mich. 445, etc. F. A.